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to after October 4, 1976, are to be disregarded. The period of deemed qualification for a plan maintained pursuant to a collective bargaining agreement will not, however, extend beyond December 31, 1981.

(ii) A written group legal services plan will be considered to have been in existence on June 4, 1976, if on or before that date the plan was reduced to writing and adopted by one or more employers. No amounts need have been contributed under the plan as of June 4, 1976.

(iii) Notwithstanding that a plan is a qualified plan for the period of deemed qualification described in this paragraph (d)(2), the rules of paragraphs (c) and (d)(1) of this section still apply with respect to a Form 1024 and Schedule L filed for the plan. For example, if a Form 1024 and Schedule L filed by or on behalf of an employer are filed before the latest of the 3 dates described in paragraph (d)(1) of this section, in the case of a favorable determination the plan will be a qualified plan from the date the plan is adopted by the employer (or, if later, January 1, 1977), and any period of deemed qualification and the period of qualification based upon the favorable determination will overlap. However, in the case of a plan to which this paragraph (d)(2) applies, if a Form 1024 and Schedule L required to be filed by or on behalf of an employer is not filed before the latest of the 3 dates described in paragraph (d)(1) of this section, the following rules shall apply. In general, if Form 1024 and Schedule L are filed before the end of the plan year following the plan year with or within which the plan's period of deemed qualification expires, in the event of a favorable determination the plan will be a qualified plan with respect to the employer beginning on the earlier of the day following the date on which the period of deemed qualification expires or the date on which the Form 1024 and Schedule L are filed. The period of plan qualification with respect to an employer cannot, however, include any period before the employer adopts the plan. If the Form 1024 and Schedule L are not filed before the end of the plan year following the plan year with or within which the plan's period of deemed qualification expires, in the case of a favorable determination the plan will be a qualified plan with respect to an employer from the later of the date of filing or adoption of the plan by the employer. The rules described in paragraph (d)(1) of this section relating to incomplete filings and plan modifications apply with respect to a filing described in this paragraph (d)(2).

(e) *Effective date.* This section is effective for notices of application for recognition of the status of a qualified group legal services plan filed after May 29, 1980.

(Secs. 120(c)(4) and 7805 of the Internal Revenue Code of 1954, 90 Stat. 1926, 68A Stat. 917; (26 U.S.C. 120(c)(4), 7805))

[T.D. 7696, 45 FR 28320, Apr. 29, 1980]

§ 1.121–1 Gain from sale or exchange of residence of individual who has attained age 55.

(a) *General rule.* Section 121(a) provides that a taxpayer may, under certain circumstances, elect to exclude from gross income gain realized on the sale or exchange of property which was the taxpayer's principal residence. Subject to the other provisions of section 121 and the regulations thereunder, the election may be made only if—

(1) The taxpayer attained the age of 55 before the date of the sale or exchange of the taxpayer's principal residence, and

(2) Except as provided in paragraph (b) of this section, during the 5-year period ending on the date of the sale or exchange of the property the taxpayer owned and used the property as the taxpayer's principal residence for periods aggregating 3 years or more.

(b) *Transitional rule.* In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have this section applied by substituting ''8-year period'' for ''5-year period'' and ''5 years'' for ''3 years'' in paragraph (a) of this section and where appropriate in §§ 1.121–4 and 1.121–5.

(c) *Ownership and use.* The requirements of ownership and use for periods aggregating 3 years or more may be satisfied by establishing ownership and use for 36 full months (or 60 full

months if the transitional rule is elected) or for 1,095 days (365×3) (or 1,825 days if the transitional rule is elected). In establishing whether a taxpayer has satisfied the requirement of three years of use, short temporary absences such as for vacation or other seasonal absence (although accompanied with rental of the residence) are counted as periods of use.

(d) *Examples.* The provisions of paragraph (a) are illustrated by the following examples:

Example (1). Taxpayer A owned and used his house as his principal residence since 1966. On January 1, 1980, when he is over 55, A retires and moves to another state with his wife. A leases his house from then until September 30, 1981, when he sells it. A may make an election under section 121(a) with respect to any gain on such sale since he has owned and used the house as his principal residence for 3 years out of the 5 years preceding the sale.

Example (2). Taxpayer B purchased his house in 1971 when he was 65 and lived there with his wife. On July 1, 1977, he moved out and leased the house to a tenant. On September 15, 1979, he sold the house. Although he does not meet the use requirements of section 1.121–1(a), he may elect to use the transitional rule in section 1.121–1(b), since the sale was made before July 26, 1981. Because he owned and used the house as his principal residence for 5 out of the 8 years preceding the sale, under the transitional rule he may elect the section 121 exclusion.

Example (3). Taxpayer C lived with his son and daughter-in-law in a house owned by his son from 1973 through 1979. On January 1, 1980, he purchased this house and on July 31, 1982 , he sold it. Although B used the property as his principal residence for more than 3 years, he is not entitled to make an election under section 121(a) in respect of such sale since he did not own the residence for a period aggregating 3 years during the 5 year period ending on the date of the sale.

Example (4). Taxpayer D, a college professor, purchased and moved into a house on January 1, 1980. He used the house as his principal residence continuously to February 1, 1982, on which date he went abroad for a 1-year sabbatical leave. During a portion of the period of leave the property was unoccupied and it was leased during the balance of the period. On March 1, 1983, 1 month after returning from such leave, he sold the house. Since his leave is not considered to be a short temporary absence for purposes of section 121(a), the period of such leave may not be included in determining whether D used the house as his principal residence for periods aggregating 3 years during the 5 year period ending on the date of the sale. Thus, D is not entitled to make an election under section 121(a) since he did not use the residence for the requisite period.

Example (5). Assume the same facts as in example (1) except that during the three summers from 1977 through 1979, A left his residence for a 2-month vacation each year. Although, in the 5 year period preceding the date of sale, the total time spent away from his residence on such vacations (6 months) plus the time spent away from such residence from January 1, 1980, to September 30, 1981 (21 months) exceeds 2 years, he may make an election under section 121(a) since the 2-month vacations are counted as periods of use in determining whether A used the residence for the requisite period.

[T.D. 7614, 44 FR 24839, Apr. 27, 1979]

§1.121–2 Limitations.

(a) *Dollar limitation*—(1) *Amount excludable.* Under section 121(a), an individual may exclude from gross income up to $100,000 of gain from the sale of his or her principal residence ($50,000 in the case of a separate return by a married individual).

(2) *Example.* The provisions of this paragraph are illustrated by the following example:

Example. Assume that A sells his principal residence for $160,800, that the amount realized is $160,400 (selling price reduced by selling expenses, described in paragraph (b)(4)(i) of §1.1034–1, of $400); and that A's gain realized from the sale is $107,900 (amount realized reduced by adjusted basis of $52,500). The portion of the gain which is taxable is $7,900 ($107,900) − ($100,000). Thus $100,000 is the portion of the gain excludable from gross income pursuant to an election under section 121(a).

(b) *Application to only one sale or exchange.* (1) Except as provided in paragraph (c), a taxpayer may not make an election to exclude from gross income gain from the sale or exchange or a principal residence if there is in effect at the time the taxpayer wishes to make such election—

(i) An election made by the taxpayer, under section 121(a), in respect of any other sale or exchange of a residence, or

(ii) An election made by the taxpayer's spouse (such marital status to be determined at the time of the sale or exchange by the taxpayer, see paragraph (f) of §1.121–5) under the provisions of section 121(a) in respect of any other sale or exchange of a residence (without regard to whether at the time